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Trade strategies of the TPP-11 countries: Asian regionalism in turbulent times

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Part II:

Trade Strategies of the TPP-11 Countries: Asian Regionalism in Turbulent Times

Pasha L. HSIEH

ABSTRACT

The US withdrawal from the Trans-Pacific Pacific Partnership (TPP) in January 2017 has prompted the remaining countries to pursue alternative trade strategies. Australia and Japan have pushed for effectuating the TPP without US participation. The current efforts focus on seeking consensus on the scope of suspensions over the original agreement. The TPP-11 countries expect to reach an agreement in principle during the Asia-Pacific Economic Cooperation meeting in November 2017. Critical factors that will influence the TPP also include negotiations for the 16-country Regional Comprehensive Economic Partnership and China's new trade initiatives. Hence, EU policy on trade and investment agreements with the Asia-Pacific ought to consider the changing dynamics of Asian regionalism.

List of selected trade initiatives

Abbreviation	Title	Nature	Member
APEC	Asia-Pacific Economic Cooperation	Annul forum/Economic cooperation	21 Asia-Pacific economies
ASEAN	Association of Southeast Asian Nations	Economic community	10 Southeast Asian countries
CETA	Comprehensive Economic and Trade Agreement	Comprehensive FTA	Canada and the EU
FTAAP	Free Trade Area of the Asia-Pacific	Comprehensive FTA	21 APEC economies
NAFTA	North American Free Trade Agreement	Comprehensive FTA	Canada, Mexico, and the US
OBOR	One Belt, One Road initiative	China-led economic cooperation	69 economies
RCEP	Regional Comprehensive Economic Partnership	Comprehensive FTA	16 Asia-Pacific countries
TiSA	Trade in Services Agreement	WTO plurilateral agreement on services	23 parties (including the EU)
TPP	Trans-Pacific Partnership	Comprehensive FTA	11 countries (after the US withdrawal)

1 Introduction

This paper forms part of the study for the workshop of the Trade Committee of the European Parliament on **“New options for trade relations in the Pacific and their potential effects on the EU and global trade policies.”** In particular, the paper focuses on the trade strategies of Asia-Pacific and Latin American countries that are parties to the Trans-Pacific Partnership (TPP) after the US withdrew from the agreement.

The paper proceeds as follows. Section 2 explains the current status of the TPP. It assesses the legal and political issues associated with the positions and options of the remaining 11 partners. Section 3 sheds light on the evolution of the Regional Comprehensive Economic Partnership (RCEP), a 16-country mega-regional trade agreement that has been perceived to be the alternative to the TPP. Section 4 analyses the role of China in the new dynamics of Asia-Pacific regionalism in light of China’s economic policy and free trade agreement (FTA) development.

Section 5 explores the impact of the TPP and the RCEP on the Free Trade Area of the Asia-Pacific (FTAAP). This Asia-Pacific Economic Cooperation (APEC)-based initiative is poised to include 21 economies. Finally, Section 6 provides an overview of the EU trade and investment agreements with TPP and RCEP countries and offers policy recommendations for EU trade strategies toward the Asia-Pacific.

2 The current status of the TPP

The TPP was built on the Trans-Pacific Strategic Economic Partnership (known as the P-4 agreement) between Brunei, Chile, Singapore and New Zealand. The Obama administration's decision to join the TPP negotiations in 2009 reinforced its "pivot to Asia" strategy.⁴² 12 TPP partners commenced negotiations in 2010 and signed the agreement in 2016.⁴³ The TPP is often claimed to be a 21st century trade agreement that sets the gold standard. Against this background, the European Parliament's study on the TPP provides comprehensive research on the TPP's key elements and the EU's engagement in the Asia-Pacific.⁴⁴

In January 2017, the Trump administration informed the TPP partners of the US withdrawal from the TPP. It became uncertain whether the remaining signatories (TPP-11 countries) would continue their commitments and bring the TPP into effect. The TPP-11 countries convened in Chile in March 2017. According to the joint statement issued from the city of Viña del Mar, Chile, the representatives discussed the TPP-related domestic processes "and canvassed views on a way forward that would advance economic integration in the Asia Pacific."⁴⁵ They also "reiterated their firm commitment to collaborate in keeping markets open."⁴⁶

In May 2017, the 11 partners met again in Vietnam. According to the Ministerial Statement, they "reaffirmed the balanced outcome and the strategic and economic significance of the TPP" and "agreed to launch a process to assess options to bring" the TPP into force.⁴⁷ The assessment is expected to be finalized at the APEC Economic Leaders' Meeting in Vietnam in November 2017. To undertake the ministerial mandate, senior officials met in Sydney in August and Tokyo in September 2017.⁴⁸

Australia and Japan have been the driving forces behind the push to continue with the TPP even without US participation. Mexico, New Zealand and Singapore clearly indicated their support for this position.⁴⁹ However, given the following challenges, keeping the status quo of the TPP may not be feasible. First, certain TPP partners, exemplified by Vietnam, have expressed reluctance to maintain the same commitments without access to the US market.⁵⁰ The TPP-11 countries agreed to suspend selected rules in the TPP and the Tokyo meeting aimed to discuss the 50 proposed items for suspension.⁵¹ As of September 2017, the countries only agreed to freeze extended protection periods for patent and data on biomedicines, which the US insisted. Other controversial issues relate to clauses on state-owned-

⁴² I. Fergusson, & B. Williams, *The Trans-Pacific Partnership (TPP): Key Provisions and Issues for Congress*, Congressional Research Service, 2016, p. 1-6, <https://fas.org/sgp/crs/row/R44489.pdf>.

⁴³ The full text of the Trans-Pacific Partnership (TPP) Agreement can be found at <http://dfat.gov.au/trade/agreements/tpp/news/Pages/news.aspx> (last visited 28 Sept. 2017) (TPP News).

⁴⁴ P. Chase, et. al., *The Trans-Pacific Partnership Agreement: Implications for the EU Economy and for its Trade Negotiations with the United States, Japan, Australia and New Zealand*, European Parliament, Directorate-General for External Policies, Policy Department, April 2017.

⁴⁵ TPP News, op. cit.

⁴⁶ TPP News, op. cit.

⁴⁷ TPP News, op. cit.

⁴⁸ TPP News, op. cit.; *TPP Members Make Progress on New Trade Accord, Eye November Deadline*, Japan Times, September 2017, <https://www.japantimes.co.jp/news/2017/09/22/business/tpp-members-make-progress-new-trade-accord-eye-november-deadline/#.WcxLyluCx0w>.

⁴⁹ K. Binder, *From TPP to New Trade Arrangements in the Asia-Pacific Region*, European Parliamentary Research Service, 2017, p. 3, [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2017\)603953](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2017)603953); *Mexican Minister Supports Japan's Leadership in Achieving TPP without U.S.*, Japan Times, July 2017, <https://www.japantimes.co.jp/news/2017/07/31/business/mexican-minister-supports-japans-leadership-achieving-tpp-without-u-s/#.Wadwy7ljF0w>.

⁵⁰ *Vietnam Proposes Amendments to Stalled TPP Trade Deal at Sydney Talks: Sources*, Reuters, August 2017, <http://bilaterals.org/?vietnam-proposes-amendments-to&lang=en>.

⁵¹ R. Yasoshima & J. Yamazaki, *Japan Pushes for 'TPP 11' Progress with Tokyo Meeting*, Nikkei Asian Review, September 2017, <https://asia.nikkei.com/Politics-Economy/International-Relations/Japan-pushes-for-TPP-11-progress-with-Tokyo-meeting>.

enterprises and labour rights protection. At the APEC meeting, the TPP-11 countries expect to conclude the agreement in principle that will determine the scope of suspensions over the original agreement.⁵²

Second, to date, only Japan and New Zealand have ratified the TPP (in January and May 2017, respectively).⁵³ To implement the TPP, the current ratification clause needs to be amended. Under Article 30.5, the TPP coming into force is conditioned on the approval of six members that account for 85% of the combined gross domestic product (GDP) "of the original signatories." This provision makes US membership indispensable, as the US GDP alone accounts for 62.5% of the combined GDP of the original 12 TPP countries.⁵⁴ Lastly, ongoing FTA negotiations may influence the momentum for expediting TPP talks. Notable examples include the RCEP, the EU-Japan FTA, the China-Japan-Korea FTA, and Australia's FTAs with India and Indonesia.

Recent elections and policy changes in selected TPP countries are also of significance to the pact. As Prime Minister Shinzo Abe's ruling coalition won a two-thirds majority in Parliament in the October 2017 election, Japan will strengthen its leadership in implementing the TPP. Another TPP meeting, which will be convened near Tokyo one week before the APEC summit in November, will further narrow the scope of proposed amendments and suspensions to the agreement.⁵⁵

On par with Australia and Japan, New Zealand's position has been to keep the TPP intact. However, following the election in September 2017, new Prime Minister Jacinda Ardern indicated that her centre-left government will renegotiate the TPP terms that affect foreign ownership of residential property.⁵⁶ In this regard, New Zealand will be more in line with Canada and Malaysia. They consider the TPP to be the strategic option to bridge ties with emerging economies but argue for selected terms to be renegotiated.⁵⁷

3 RCEP negotiations: an ASEAN initiative

The 16 RCEP countries account for 32% of world goods exports and 28% of global GDP.⁵⁸ Built upon the Association of Southeast Asian Nations (ASEAN) FTAs, the RCEP includes ten ASEAN countries and ASEAN's six FTA partners. The RCEP has been perceived as the agreement best positioned to compete with the TPP because seven countries are parties to both mega-regional trade pacts. Significantly, China and India are parties to the RCEP but not to the TPP. The RCEP is also expected to fill the FTA gap between China and India and between China and Japan.

⁵² M. Smith, *Japanese eager for Trans-Pacific Partnership with All eyes, including Theirs, on NAFTA*, National Post, October 2017, <http://nationalpost.com/news/politics/japanese-keen-to-move-on-trans-pacific-partnership-with-all-eyes-including-theirs-on-nafta>.

⁵³ K. Buchanan, *New Zealand: Ratification of Trans-Pacific Partnership Agreement Completed*, Library of Congress Global Legal Monitor, May 2017, <http://www.loc.gov/law/foreign-news/article/new-zealand-ratification-of-trans-pacific-partnership-agreement-completed/>.

⁵⁴ M. Tsirbas et. al., 'The Future of the TPP', *ASEAN Focus* No. 8, October 2016, pp. 14-15.

⁵⁵ *TPP Negotiators to Meet in Japan Next Week ahead of APEC Summit*, Japan Times, October 2017, <https://www.japantimes.co.jp/news/2017/10/24/business/tpp-negotiators-meet-japan-next-week-ahead-apec-summit/#.WfAqNluCx0w>.

⁵⁶ B. Cooper, *New Zealand's Incoming Leader Flags TPP Problems*, Reuters, October 2017, <http://www.reuters.com/article/us-trade-tpp-newzealand/new-zealands-incoming-leader-flags-tpp-problems-idUSKBN1CR042>.

⁵⁷ M. Kappler, *Canada, other countries will move forward on new Trans-Pacific Partnership after U.S. withdrawal*, Toronto Sun, May 2017, <http://torontosun.com/2017/05/21/canada-other-countries-will-move-forward-on-new-trans-pacific-partnership-after-us-withdrawal/wcm/e6754d14-69a2-446f-ac4a-8781fce8a918>; *Malaysia Eyes TPP-11, But on Its Terms*, AEC News Today, October 2017, <https://aecnewstoday.com/2017/malaysia-eyes-tpp-11-but-on-its-terms/#axzz4wV6tEGum>.

⁵⁸ A. Staples, *ASEAN Connections: How Mega-regional Trade and Investment Initiatives in Asia Will Shape Business Strategy in ASEAN and Beyond*, Economist Corporate Network Report, April 2016, p. 12, http://economists-pick-research.hktdc.com/resources/MI_Portal/Article/ef/2016/12/477594/1482890146457_Baker-ASEAN-Connections-Report.pdf.

As for substantive commitments, the RCEP aims to achieve a “comprehensive, high quality” FTA, although the level of the RCEP’s liberalization is envisioned to be lower than that of the TPP and EU FTAs.⁵⁹ In addition to core elements, such as trade in goods, trade in services and investment, the RCEP will incorporate chapters on competition, intellectual property and other issues. To date, the negotiators have finalized the chapters on “economic and technical cooperation” and on “small and medium enterprises.”⁶⁰ Working groups on government procurement and trade remedies also convened for the first time in July 2017.⁶¹ However, it is unknown whether the RCEP countries are contemplating the inclusion of regulatory issues on environmental standards or the protection of labour rights.

The RCEP can trace back to various initiatives of Asian regionalism. In the 2000s, China and Japan supported different regional initiatives, known as the East Asian Free Trade Area (EAFTA) and the Comprehensive Economic Partnership for East Asia (CEPEA).⁶² The EAFTA is based on the ASEAN+3 structure, whereas the CEPEA is based on the ASEAN+6 framework that includes Australia, India and New Zealand. During the same period, APEC’s FTAAP proposal and US accession to the TPP made the roadmap for Asian regionalism more complex. In 2011, ASEAN states introduced the framework for the RCEP to integrate FTA partners and to ensure ASEAN centrality.⁶³

Based on ASEAN’s 2012 Guiding Principles and Objectives for Negotiating the RCEP, the 16-party negotiations since 2013 have essentially merged China’s and Japan’s proposals.⁶⁴ In September 2017, RCEP partners agreed on “the RCEP Key Elements for Significant Outcomes by End of 2017” and mandated that officials report the outcomes to leaders in November 2017.⁶⁵ The chair of the 19th RCEP trade negotiations committee indicated that the agreement “could be concluded sometime in 2018.”⁶⁶

The fact that ASEAN has driven the RCEP process is different from the conventional understanding that China has dominated the negotiations.⁶⁷ From legal and political aspects, building the RCEP on ASEAN’s internal and external FTAs is a more feasible option. The ASEAN Economic Community Blueprint 2025 places the RCEP as ASEAN’s trade priority.⁶⁸ ASEAN has concluded five ASEAN+1 FTAs with six Asia-Pacific partners since 2002 and the RCEP could further streamline the regional supply chain. It should be noted that the differences in legal structures and commitments among ASEAN+1 FTAs could influence the RCEP.

Among ASEAN+1 FTAs, the ASEAN-Australia-New Zealand FTA is the only comprehensive, single-undertaking FTA. ASEAN FTAs with China, India, Japan and Korea have followed the incremental approach by first enacting a framework agreement that facilitates the signing of subsequent agreements on trade in

⁵⁹ Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership, 2012, <http://asean.org/storage/2012/05/RCEP-Guiding-Principles-public-copy.pdf> (Guiding Principles).

⁶⁰ ASEAN, Joint Media Statement, the Third Regional Comprehensive Economic Partnership (RCEP) Intersessional Ministerial Meeting, May 2017, p. 1, <http://asean.org/storage/2017/05/RCEP-3ISSL-MM-JMS-FINAL-22052017.pdf>.

⁶¹ ASEAN, Joint Media Statement, the Fifth Regional Comprehensive Economic Partnership (RCEP) Ministerial Meeting, 2017, p. 1, <http://asean.org/storage/2017/09/RCEP-5MM-Final-JMS1.pdf> (RCEP Statement 2017).

⁶² C. Kent, ‘East Asian Integration Towards an East Asian Economic Community’, *ADB Working Paper Series*, No. 665, February 2017, p. 23, <https://www.adb.org/sites/default/files/publication/228896/adb-wp665.pdf>; East Asia Vision Group II (EAVGII), *Summary of Stock-Taking Report on ASEAN Plus Three Economic and Financial Cooperation*, Report of the East Asian Vision Group II (EAVG), 2013, p. 43-46, <http://www.mfa.go.th/asean/contents/files/asean-media-center-20130312-112418-758604.pdf>.

⁶³ ASEAN Framework for Regional Comprehensive Economic Partnership, 2011, http://asean.org/?static_post=asean-framework-for-regional-comprehensive-economic-partnership.

⁶⁴ Guiding Principles, op. cit.

⁶⁵ RCEP Statement 2017, op. cit.

⁶⁶ RCEP Trade Panel Head Confident of Closing Talks in 2018, *Times of India*, July 2017, <http://timesofindia.indiatimes.com/business/india-business/rcep-trade-panel-head-confident-of-closing-talks-in-2018/articleshow/59756548.cms>.

⁶⁷ Pambagyo, I., ‘RCEP is the Only Game in Town’, *ASEAN Focus* No. 2, March 2017, pp. 26-27.

⁶⁸ ASEAN Economic Community Blueprint 2025, 2015, p. 35-36, <http://www.asean.org/storage/images/2015/November/aec-page/AEC-Blueprint-2025-FINAL.pdf>.

goods, services, investment and dispute settlement. All agreements form the integrity of FTAs. The ASEAN-Japan FTA remains incomplete because it encompasses merely the agreement on goods.

There are salient features of the RCEP. As negotiating countries accepted India's request for adopting the single-undertaking approach, the RCEP will likely follow the ASEAN-Australia-New Zealand FTA's "all in" formula. According to the Guiding Principles, the RCEP will not extinguish intra-RCEP FTAs and "no provision in the RCEP agreement will detract from the terms and conditions in" existing FTAs.⁶⁹ In other words, the RCEP will co-exist with the five ASEAN+1 FTAs. Moreover, to accommodate "the different levels of development," the RCEP will allow for flexibility by incorporating special and differential treatment provisions.⁷⁰ This flexibility design is consistent with arrangements for Cambodia, Laos, Myanmar and Vietnam under ASEAN and ASEAN+1 FTA frameworks.

4 The China dimension

China was initially skeptical about the TPP, but changed its position when the Ministry of Commerce announced a "serious study" of the TPP in May 2013.⁷¹ President Xi Jinping reinforced this position at the Sunnylands summit.⁷² In the meantime, China's wait-and-see position on the TPP is exemplified by its acceleration of the RCEP and bilateral FTAs, as well as its experiment with higher-level liberalization in the Shanghai Pilot Free Trade Zone. China's positions on the TPP and the RCEP inevitably affect the feasibility of pathways to the FTAAP.

Markedly, China has concluded bilateral FTAs with five TPP countries (Australia, Chile, New Zealand, Peru and Singapore), and is negotiating to upgrade FTAs with Chile, New Zealand and Singapore.⁷³ As for the RCEP, China is the largest member economy, which accounts for more than one third of RCEP GDP.⁷⁴ Four of China's FTAs also cover 13 RCEP countries.⁷⁵ According to an empirical study, the Chinese economy could gain \$88 billion if the TPP failed and the RCEP were passed, and this amount is \$16 billion more than the scenario where both mega-regionals became effective.⁷⁶ The political likelihood of concluding the RCEP and implementing the TPP (among the 11 parties) in 2018 remains optimistic.

The RCEP could benefit China's 13th Five-Year Plan, in which the National People's Congress first placed the "One Belt, One Road" (OBOR) initiative as a national priority in 2016.⁷⁷ The OBOR initiative is based on President Xi's announcement of "the Silk Road Economic Belt" and "the 21st-century Maritime Silk Road"

⁶⁹ Guiding Principles, op. cit., principles 2 & 5.

⁷⁰ Guiding Principles, op. cit., principle 4.

⁷¹ Y. Min, *China Liked TPP — Until U.S. Officials Opened Their Mouths*, Foreign Policy, May 2015, <http://foreignpolicy.com/2015/05/15/china-liked-trans-pacific-partnership-until-u-s-officials-opened-their-mouths-trade-agreement-rhetoric-fail/>.

⁷² B. Gordon, *Bring China Into TPP*, The National Interest, April 2014, <http://nationalinterest.org/commentary/bring-china-tpp-10227>.

⁷³ China FTA Network, <http://fta.mofcom.gov.cn/english/> (last visited 29 Sept. 2017).

⁷⁴ China's share of RCEP GDP, see P. Hubbard & D. Sharma, 'Understanding and Applying Long-term GDP Projections', *EABER Working Paper Series* No. 18, June 2016, p. 15, [http://saber.eaber.org/system/tdf/documents/EABER%20Working%20Paper%20119%20Hubbard%20Sharma.pdf?file=1&type=node&id=25601&force=](http://saber.eaber.org/system/tdf/documents/EABER%20Working%20Paper%20119%20Hubbard%20Sharma.pdf?file=1&type=node&id=25601&force=;); J. Jin, *RCEP v. TPP*, Fujitsu Research Institute, February 2013, <http://www.fujitsu.com/jp/group/fri/en/column/message/2013/2013-02-22.html>.

⁷⁵ These agreements are China's FTAs with ASEAN, Australia, Korea and Singapore.

⁷⁶ United States Government Publishing Office, 2016 Report to Congress of the U.S.-China Economic and Security Review Commission, 2016, p. 24, https://www.uscc.gov/sites/default/files/annual_reports/Executive%20Summary%202016.pdf.

⁷⁷ See generally K. Koleski, *The 13th Five-Year Plan*, U.S.-China Economic and Security Review Commission, February 2017, p. 3 & 20-22, <https://www.uscc.gov/sites/default/files/Research/The%2013th%20Five-Year%20Plan.pdf>.

in Kazakhstan and Indonesia, respectively, in 2013.⁷⁸ The goal of OBOR is to export China's excess industrial capacity and capital.

OBOR also became a guiding principle of China's 2015 FTA strategy, which accelerates the building of high-level free trade areas and strengthens economic cooperation.⁷⁹ An OBOR summit was held in Beijing in May 2017 and currently OBOR includes 69 economies.⁸⁰ Important TPP and RCEP countries that are not OBOR members include Australia, India and Japan. In 2017, Prime Ministers Narendra Modi and Shinzo Abe announced the creation of the Asia-Africa Growth Corridor, which resembles OBOR by focusing on infrastructure projects and capacity building.⁸¹ The dynamics between China, India and Japan will influence the RCEP progress.

5 The APEC-based FTAAP

APEC includes TPP-11 countries and 12 parties to the RCEP. APEC's Bogor Goals aim to achieve "free and open trade and investment in the Asia-Pacific" by 2020.⁸² To reinvigorate APEC in light of proliferating FTAs, the APEC Business Advisory Council proposed the APEC-based FTAAP in 2004.⁸³ After APEC agreed to examine the FTAAP in 2006, the 2010 APEC Leaders' Declaration identified "ASEAN+3, ASEAN+6, and the Trans-Pacific Partnership" as pathways to the 21-party FTA.⁸⁴

The economic rationale for the FTAAP can be interpreted as fortifying the link among APEC economies amid the Doha Round impasse. In reality, the enormous development gap between countries such as the US and Papua New Guinea makes the FTAAP infeasible in the foreseeable future. Nevertheless, the FTAAP could buttress APEC's institutional role in facilitating regional trade initiatives. In the APEC context, the RCEP first appeared when APEC leaders declared that "the possible pathways to the FTAAP" include both the TPP and the RCEP in the Annex on the 2014 Beijing Roadmap.⁸⁵ China pushed for the inclusion of the RCEP when it hosted the APEC meetings in 2014. The United States initially opposed the initiative because of concern about detracting from the TPP.⁸⁶ The compromise was to pursue APEC's Collective Strategic Study on the FTAAP under the auspices of China. In 2015, APEC leaders urged the early completion of RCEP negotiations.⁸⁷

In 2016, APEC further endorsed the FTAAP Study that details the convergences and divergences of Asia-Pacific trade rules, as well as the status and features of the TPP, the RCEP and the Pacific Alliance.⁸⁸

⁷⁸ L. Zhang, *Chronology of China's Belt and Road Initiative*, China.org.cn, January 2017, http://www.china.org.cn/china/2017-01/05/content_40044651.htm.

⁷⁹ State Council, *Several Opinions on Accelerating the Implementation of the Free Trade Area Strategy*, 2015.

⁸⁰ *Belt and Road Attendees List*, The Diplomat, May 2017, <http://thediplomat.com/2017/05/belt-and-road-attendees-list/>; The Belt and Road Initiative: Country Profiles, HKTRC Research, <http://china-trade-research.hktrdc.com/business-news/article/The-Belt-and-Road-Initiative/The-Belt-and-Road-Initiative-Country-Profiles/obor/en/1/1X000000/1X0A3610.htm> (last visited 9 September 2017).

⁸¹ Asia Africa Growth Corridor: Partnership for Sustainable and Innovative Development: A Vision Document, Economic Research Institute for ASEAN and East Asia (ERIA), May 2017, p. 3-6, <http://www.eria.org/Asia-Africa-Growth-Corridor-Document.pdf>.

⁸² 1994 Leaders' Declaration, Asia-Pacific Economic Cooperation (APEC), November 1994, https://www.apec.org/Meeting-Papers/Leaders-Declarations/1994/1994_aelm.aspx.

⁸³ *Asia Pacific Business Leaders to Press APEC Leaders to Accelerate Regional Economic Integration*, APEC News Release, February 2014, p. 1, <https://www.businessnz.org.nz/news-and-media/media-releases/2014/asia-pacific-business-leaders-to-press-apec-leaders-to-accelerate-regional-economic-integration>.

⁸⁴ Annex A to the 2014 Leaders Declaration: The Beijing Roadmap for APEC's Contribution to the Realization of the FTAAP, https://www.apec.org/Meeting-Papers/Leaders-Declarations/2014/2014_aelm/2014_aelm_annexa.aspx (Beijing Roadmap).

⁸⁵ Beijing Roadmap, op. cit.

⁸⁶ S. Tiezzi, *US Pressures China to Kill Asia-Pacific Free Trade Agreement Talks*, The Diplomat, November 2014, <http://thediplomat.com/2014/11/us-pressure-china-to-kill-asia-pacific-free-trade-agreement-talks/>.

⁸⁷ 2015 Leaders' Declaration, Asia-Pacific Economic Cooperation (APEC), November 2015, https://www.apec.org/Meeting-Papers/Leaders-Declarations/2015/2015_aelm.aspx.

⁸⁸ 2016 Leaders' Declaration, Asia-Pacific Economic Cooperation (APEC), November 2016, https://www.apec.org/Meeting-Papers/Leaders-Declarations/2016/2016_aelm.aspx; Appendix 6: Collective Strategic Study on Issues Related to the Realization of

Significantly, the open accession clauses of the TPP and the RCEP enable either agreement to lead to the FTAAP. Article 30.4 of the TPP provides that the accession to the TPP is open to “any State or separate customs territory,” which is an APEC member “as the Parties may agree.” Pursuant to the Guiding Principle, the RCEP will also allow “the participation of any ASEAN FTA partner” or “any other external economic partner.”⁸⁹

In terms of North and Latin America, three North American Free Trade Agreement (NAFTA) countries have started negotiations to amend the NAFTA and Canada and Mexico have explored the feasibility of concluding FTAs with China.⁹⁰ Canada, along with Australia, New Zealand and Singapore, also expect to join the 4-country Pacific Alliance as associate members.⁹¹ Two Pacific Alliance and TPP members, Chile and Peru, have indicated their interest in joining the RCEP.⁹²

Moreover, instead of joining the ASEAN-China FTA, Hong Kong has concluded negotiations for the ASEAN-Hong Kong FTA and Investment Agreement and both instruments will be signed in November 2017.⁹³ The new ASEAN+1 FTA will pave the way for Hong Kong to join the RCEP. As the FTAAP will include 21 Asia-Pacific economies, the expansion of the TPP, the RCEP, or the Pacific Alliance will contribute to forming the APEC-based FTA.

6 Conclusions and recommendations for the EU

This paper provided an up-to-date overview of the TPP. While TPP-11 countries agreed to continue the agreement, the challenge will be to narrow and define the scope of suspensions over contentious provisions. The RCEP has been arguably “on track” and expects to be concluded in 2018. However, the flexibility and SDT mechanisms of the RCEP can compromise the intended result of liberalization. To implement its OBOR initiative, China’s membership in the RCEP and FTAs with TPP members have influenced the dynamics of both mega-regionals. The FTAAP will also be built upon the ratification of the TPP, the RCEP and, to a lesser extent, the Pacific Alliance.

According to its new “Trade for All” trade strategy in 2015, the European Commission stressed its strategic interest in the Asia-Pacific. The EU-Vietnam FTA was concluded in 2015 and expects to enter into force in 2018.⁹⁴ Negotiations for the EU-Singapore FTA were completed in 2014 but the FTA has yet to be ratified, pending the implementation of the decision that the Court of Justice of the European Union (Court) rendered in May 2017.⁹⁵ In the Court’s view, the EU-Singapore FTA is a mixed agreement under which the EU and its member states share competence to sign provisions on non-foreign direct investment and

the FTAAP, 2016 CTI Report to Ministers, November 2016, p. 157-70, <https://www.apec.org/~media/Files/.../Appendix%2006%20-%20FTAAP%20Study.pdf>.

⁸⁹ Guiding Principles, op. cit., principle 6.

⁹⁰ A. Campbell, *The US, Canada, and Mexico Are Renegotiating NAFTA — Here’s What Each Country Wants*, VOX, September 2017, <https://www.vox.com/policy-and-politics/2017/9/5/16156924/nafta-negotiations>; C. Dalby, *NAFTA opens door to Mexico and Canada for China*, Global Times, July 2017, <http://www.globaltimes.cn/content/1056253.shtml>.

⁹¹ Pacific Alliance, <https://www.mfat.govt.nz/en/countries-and-regions/latin-america/pacific-alliance/> (last visited 30 September 2017).

⁹² N. Chandran, *After US Drops TPP, China Joins Member States in Trade Talks*, CNBC, March 2017, <https://www.cnbc.com/2017/03/14/china-south-korea-join-tpp-members-in-trade-talks.html>.

⁹³ *China’s Hong Kong, ASEAN Conclude Free Trade Agreement Negotiations*, China Daily, September 2017, http://www.chinadaily.com.cn/business/2017-09/09/content_31769119.htm.

⁹⁴ O. Massmann, *EU-Vietnam Free Trade Agreement - Market Access Opportunities*, Lexology, October 2016, <https://www.lexology.com/library/detail.aspx?g=0910b071-b602-461b-a393-92a9fa1295d1>.

⁹⁵ European Commission, *Trade: Countries and Regions – Singapore*, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/singapore/> (last visited 2 October 2017).

investor-state dispute settlement (ISDS).⁹⁶ Following the decision, Singapore indicated its wish to have the EU provisionally apply the sections of the FTA under which the EU is entitled to exclusive competence.⁹⁷

The EU and Japan reached a political agreement in principle on the main elements of the FTA in July 2017.⁹⁸ As of September 2017, the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada has been provisionally applied.⁹⁹ Yet, Belgium's 6 September request to the Court to determine the compatibility of the Investment Court System (ICS) of the CETA with EU law may impact the full implementation of the agreement.¹⁰⁰ In September 2017, the European Commission announced that FTA negotiations with Australia and New Zealand will be commenced.¹⁰¹ Since ongoing TPP and RCEP negotiations will inevitably influence the EU's trade relations with the Asia-Pacific, the paper provides the following policy recommendations.

- While the European Parliament has conducted research on the TPP, it is pivotal to assess the economic impact of the RCEP on the EU. Ten RCEP countries are among the EU's top 30 trade partners and eight RCEP countries are among the 20 countries with which the EU runs the largest trade deficits.¹⁰² It also benefits the EU's trade strategy to explore how the seven TPP partners and four Trade in Services Agreement (TiSA) members of the RCEP countries will transplant the TPP and TiSA standards into the RCEP.¹⁰³
- The EU's ICS proposal reflects a reformed approach to investment protection and provides a framework for a multilateral investment court.¹⁰⁴ Currently, the ICS is only included in the CETA and the EU-Vietnam FTA. None of Asian FTAs, such the TPP or the RCEP, have included or considered the ICS. The insistence on incorporating the ICS into bilateral FTAs will likely postpone negotiations. Furthermore, based on the Court's decision on the EU-Singapore FTA, the inclusion of any ISDS provisions in the FTA would inevitably delay and increase the unpredictability of the FTA due to the need for member states' ratification.

The EU's discussion "on the best architecture for EU trade agreements and investment protection agreements" is advised to address the legal nexus between the FTA and the investment agreement, as well as timeframes for concluding and implementing both instruments.¹⁰⁵ A potential approach is to utilize the FTA as a framework for a subsequent bilateral investment agreement with ISDS provisions. Four ASEAN+1 FTAs and the China-Taiwan trade agreement have adopted such an incremental approach. The investment agreement thus forms an integral part of the FTA without delaying the liberalization of tariff eliminations and services trade.

⁹⁶ L. Puccio, CJEU Opinion on the EU-Singapore Agreement, European Parliament Think Tank, May 2017, p. 2, [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_ATA\(2017\)603955](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_ATA(2017)603955).

⁹⁷ W. Soon, *Singapore Looks towards Provisional Application of FTA with EU*, The Business Times, May 2017, <http://www.businesstimes.com.sg/government-economy/singapore-looks-towards-provisional-application-of-fta-with-eu>.

⁹⁸ European Commission, Overview of FTA and Other Trade Negotiations, 2017, p. 2, http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf. (Overview of FTA).

⁹⁹ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 13 September 2017, p. 4, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:479:FIN> (2017 Communication).

¹⁰⁰ P. Blenkinsop, *Belgium Seeks EU Court Opinion on EU-Canada Free Trade Deal*, The Globe and Mail, September 2017, <https://www.euractiv.com/section/ceta/news/belgium-seeks-eu-court-opinion-on-eu-canada-free-trade-deal/>.

¹⁰¹ 2017 Communication, op. cit., p. 4.

¹⁰² European Commission, Client and Supplier Countries of the EU28 in Merchandise Trade (Value %) (2016, excluding intra-EU trade), 2017, p. 1-4, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122530.02.2017.pdf.

¹⁰³ The four Trade in Services Agreement countries are Australia, Japan, South Korea and New Zealand.

¹⁰⁴ Opening Statement by Deputy-Director General, DG Trade Joost Korte, EU Opening Statement, 13th Trade Policy Review of the EU, July 2017, p. 4, http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155695.pdf.

¹⁰⁵ 2017 Communication, op. cit., p. 6.

- In 2009, ASEAN and the EU halted the negotiations of a region-to-region FTA and the EU began to focus on bilateral FTA negotiations with ASEAN states.¹⁰⁶ In 2017, ASEAN and the EU agreed to “intensify work towards the resumption of the ASEAN-EU” FTA.¹⁰⁷ Other than FTAs with Singapore and Vietnam, the EU is undertaking negotiations with Indonesia and the Philippines and will evaluate the resumption of negotiations with Malaysia and Thailand.¹⁰⁸

The potential ASEAN-EU FTA should take these bilateral FTAs into account. For instance, the rules of origin may help consolidate the regional supply chain and minimize the conventional “noodle bowl syndrome.” The development provision could streamline the EU’s involvement in the implementation of the Initiative for ASEAN Integration Work Plan III, which provides assistance to Cambodia, Laos, Myanmar and Vietnam.

¹⁰⁶ L. Vandewalle, *EU – ASEAN: Challenges Ahead*, European Parliament, Directorate-General for External Policies, Policy Department, p. 16-17, December 2014, [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_IDA\(2014\)536426](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_IDA(2014)536426).

¹⁰⁷ ASEAN, Joint Statement on the 40th Anniversary of the Establishment of ASEAN-EU Dialogue Relations, August 2017, p. 2, <http://asean.org/joint-statement-40th-anniversary-establishment-asean-eu-dialogue-relations/>.

¹⁰⁸ Overview of FTA, op. cit., p.3-4.

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